

Edith Fierst
Sept 10, 1983

ILLEGIB

Proposed lawsuit on ⁹ precedent -
Behalf of Divorced setting
Wives of CIA Empls
(Museum Box)



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Mrs. Miriam M. Barteaux
P.O.Box 1351
Portland, Maine 04101

Dear Mrs. Barteaux,

Thank you for your letter inquiring about a possible class action on behalf of CIA wives. Before discussing that action, however, I want to tell you some good news. In your own case litigation may not be necessary because of some likely legislation.

The CIA is planning to support legislation providing full survivor annuities to former CIA wives who satisfy conditions similar to those applicable to former civil service wives under P.L. 98-615. The conditions in that law require the divorce to have occurred after September 14, 1978; the marriage to have lasted ten years or longer, the former spouse not to have remarried before age 55, and be at least 50 years of age by May 8, 1987 when application for the survivor annuity must be made. It also precludes coverage for a former spouse who has retirement income as a result of other employment of the employee's or of her own, but that would be eliminated by a bill that has already passed the House and is expected to pass the Senate.

The CIA bill is expected to follow the Civil Service example in virtually all respects. There may be a differences in the date of application, and perhaps in some other respects, but if the bill passes, I believe there is an excellent chance it will cover you.

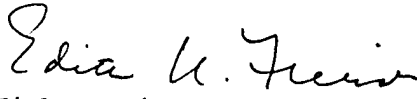
If this proposed legislation should fail to pass, and/or the bill that passes is seriously inadequate, I would be very interested in pursuing a lawsuit. The current treatment of former spouses is heartrending and outrageous (your own case is a good example), and I would like to do something about it.

Indeed because of my deep interest, I have offered to handle a class action at a much reduced rate. While I ordinarily charge \$100 an hour, I told Ann Doyle, Barbara Colby and Betty

Villamorette that if Foundation money were not available, I would ask only \$30 an hour, plus, of course, expenses. Two thousand dollars up front would be enough. If I won, I would ask to keep whatever additional sums the court awarded.

If you wish to discuss any of this, please phone me.

Sincerely


Edith U. Fierst

Spouse's Pension Part of Property

By Ed Bruske

Washington Post Staff Writer

The D.C. Court of Appeals ruled yesterday in a precedent-setting decision that government pensions earned by a spouse can be considered part of a couple's joint marital property and can be equally divided by the court in divorce proceedings.

The ruling, which brings the District into conformity with jurisdictions across the country, was seen by attorneys as a major victory for groups that advocate the rights of women who are non-wage-earning housewives.

Under the rulings, a man is also entitled to a share of his wife's pension.

"I'm extremely pleased. I think it's a wonderful decision," said Edith U. Fierst, an attorney who represented a woman who sought part of her former husband's pension benefits in one of two cases decided by the court yesterday. "It means that the work that a woman does at home counts for something."

Both cases involved men who worked for the federal government. The three-member appeals panel upheld a lower court ruling that the men must share the proceeds of their pensions equally with their former wives.

The appellate decisions, both written by Judge James A. Belson, are expected to have wide-ranging impact on divorce settlements in the city.

"It's most important for spouses who've not been employed," said Marna Tucker, a prominent D.C. divorce attorney. "These people usually get peanuts for alimony, and they're not eligible for Social Security."

The court ruled that "pensions have become an increasingly important part of an employee's compensation package, and often . . . represent the single most valuable asset acquired during the marriage."

Congress amended the Civil Service Act in 1978 to allow state courts to apply local laws designating pensions as part of a couple's joint property.

Yesterday's rulings left unclear the precise manner by which pension benefits are to be divided. It is expected that the lower court will devise its own

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*Edith Fierst supported
FS + CIA spouses in
pursuing retirement
benefits*

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*Considered
by group but
did not go
forward*

**Proposed Lawsuit on Behalf of
Divorced Wives of CIA Employees**

I am considering bringing a class action on behalf of women who were divorced from employees of the CIA prior to November 15, 1982, and possibly also those who were divorced from Foreign Service employees prior to February 5, 1981. The lawsuit would seek survivor annuities for them. The principal legal argument would be that when the Government refuses survivor annuities to these women, it deprives them of equal protection of the laws within the meaning of the fifth amendment to the Constitution.

While the Constitution recognizes the rights of Congress to provide different treatment for different classifications of individuals, any such classification must be rational and reasonably related to the Governmental purposes sought to be furthered by the legislation. In my opinion, it is not rational or reasonably related to a Government purpose for the United States Government to deny a survivor annuity to the former spouse of a CIA employee merely because she and her husband had been divorced. While there may be some argument for denying the portion paid for by withholdings from the former husband's own annuity (an argument I do not accept), there is none whatsoever for denying her that portion of the survivor annuity that would be paid for by the Government.

My first step would be to do further research and make sure the case is a good one. My current view is that there would be a reasonable chance of success. I should warn you, however, that two years ago I proposed something similar for the Foreign Service wives and was unable to persuade some knowledgeable lawyers that the case would be a winner. At that time everyone seemed to feel the legislative route was the better one. So far, however, the Congress has not acted. And so I think it is time to reconsider the lawsuit.

As I say, the argument appeals to me as a likely winner. However, even if my opinion is unwarranted, a lawsuit would create publicity, which could, in turn, lead to legislation. (Note that this often happens, most recently, for example, in the cases of the divorced wives of retirees from the railroads who were able to obtain legislation undoing the Hisquierdo decision of the Supreme Court, and of the military wives who succeeded in getting legislation to undo McCarty.)

Assuming future research does not unduly discourage me (and I reserve the right to withdraw if it does), I would be willing to take this case on a contingency basis. In order for me to do so, however, I would need to have my out-of-pocket expenses paid, including filing fees, postage, telephone, xeroxing and secretarial costs. I do not know how much these items would total, but a kitty of \$1,000 at the start would be reasonable.

If we were to lose at the lower level, we might want to appeal, or if we were to win, the CIA might, and we would need to defend. It is possible that the case would ultimately go to the Supreme Court. At each level, a decision would be required whether to continue. If your group decides to endorse the idea of a lawsuit, you may wish to appoint a committee to work with me on the case.

In the event that we were victorious, I would want to be paid for my services. There is a strong possibility that the court would award attorney's fees to be paid by the Government. I would, however, like a guarantee in the event that no such fees are awarded, or that they are too small. In addition, if this lawsuit is unsuccessful but leads to legislation, the only possibility of payment would be from the affected women. Perhaps we can work out a formula.

This paper is being distributed to the group for discussion.